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Recent Decision

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HAUCH V. CONNOR—BEGINNING A TRANSITION IN MARYLAND CONFLICT OF LAWS DOCTRINE?

In dealing with conflict of law problems in tort cases, the Court of Appeals of Maryland has adhered consistently to the doctrine of lex loci delicti,[1] refusing to adopt a more modern approach to the resolution of those conflicts.[2] In *Hauch v. Connor*,[3] however, the Court of Appeals held that the law of the forum, not lex loci delicti, governs a conflict between the Maryland Workmen's Compensation Act, which allows co-employee tort suits,[4] and another state's statute, which bars those actions.[5] Although the court characterized *Hauch* as a workers' compensation case, rather than a tort action,[6] the court's reasoning suggests that it may be more receptive to basing choice-of-law decisions on analysis of governmental interests than it maintains.

I. THE CASE

Connor, McIntire, and Hauch, all Maryland residents, were employed by Hertz Corporation in Maryland.[7] In the course of their employment,[8] the three drove together to Delaware, where their car

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1. Lex loci delicti, the "law of the place of wrong," requires a court to apply the law of the state where the last event necessary to create liability occurred. RESTATEMENT OF CONFLICT OF LAWS §§ 378, 384 (1934).

2. White v. King, 244 Md. 348, 352, 223 A.2d 763, 765 (1966) (substantive rights of Maryland domiciliaries determined by lex loci delicti in tort cases), *reaffirmed in* Frericks v. General Motors Corp., 274 Md. 288, 296, 336 A.2d 118, 123 (1975) (lex loci delicti applies to tort cases, but party must give notice of intent to use foreign law). In *White* the court reviewed criticism of lex loci delicti and arguments advanced to support adoption of the "most significant relationship" approach enunciated in the Second Restatement, but concluded that "in the present state of the law, we [should] leave any change in the established doctrine to the Legislature." 244 Md. at 352-55, 223 A.2d at 767. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6(2) (1971) (listing factors relevant to choice of law in the absence of statutory directive).

3. 295 Md. 120, 453 A.2d 1207 (1983).

4. MD. ANN. CODE art. 101, § 58 (1957).

5. DEL. CODE ANN. tit. 19, § 2304 (1979) provides that workers' compensation is generally an exclusive remedy; DEL. CODE ANN. tit. 19, § 2363 (1979) permits suit to enforce the liability of a third-party tortfeasor "other than a natural person in the same employ . . ."; Ward v. General Motors Corp., 431 A.2d 1277, 1279 (Del. Super. Ct. 1981).

6. 295 Md. at 125, 453 A.2d at 1210.

7. The parties entered their employment contracts in Maryland, and it was the regular place of performance. *Id.* at 121, 453 A.2d at 1208.

8. *Id.* at 122, 453 A.2d at 1208.

collided with another.[9] After Connor and McIntire filed for and received benefits under the Maryland Workmen's Compensation Act[10] for their injuries, they filed suit against Hauch, the driver at the time of the accident. Treating their claim as a tort claim,[11] the Circuit Court for Anne Arundel County followed lex loci delicti[12] and applied the Delaware statute to bar the suit.[13] Relying primarily on public policy considerations associated with workers' compensation,[14] the Court of Special Appeals reversed and applied Maryland law.[15]

The Court of Appeals expressly reaffirmed its adherence to the doctrine that the law of the place of the wrong governs substantive issues in tort suits.[16] But when deciding whether Connor and McIntire could maintain their action at all, the court declined to follow that doctrine.[17] In the court's view, the conflict in *Hauch* concerned not substantive tort law but the Maryland and Delaware workers' compensation statutes, to which lex loci delicti does not apply.[18] Noting that other jurisdictions, while continuing to follow lex loci delicti for tort actions generally, have taken a similar approach, the court applied forum law to workers' compensation cases.[19]

The Court of Appeals previously had recognized the importance of

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9. On February 6, 1980, Hauch drove her co-employees, Connor and McIntire, from Baltimore-Washington International Airport to Dover, Delaware, where they were to pick up rental cars belonging to Hertz Corporation and return them to Maryland. Brief for Appellant at 1, Hauch v. Connor, 295 Md. 120, 453 A.2d 1207 (1983). While in Delaware, their car collided with another car, necessitating emergency medical care in Delaware and more extensive treatment in Maryland. The Delaware driver took no part in this particular case. Brief for Appellees, Addendum at 2, *id.*

10. MD. ANN. CODE art. 101 (1957). The parties did not seek workers' compensation benefits under the Delaware Act. *Hauch*, 295 Md. at 121, 453 A.2d at 1208.

11. *See* Connor v. Hauch, Law No. 1100608, mem. op. at 2 (Cir. Ct. Anne Arundel County Jan. 27, 1981) (discussion of application of lex loci delicti to the case), *rev'd*, 50 Md. App. 217, 437 A.2d 661 (1981), *aff'd*, 295 Md. 120, 453 A.2d 1207 (1983).

12. The court cited White v. King, 244 Md. 348, 223 A.2d 763 (1966), as controlling and granted defendant's motion for summary judgment. Connor v. Hauch, Law No. 1100608, mem. op. at 2-3 (Cir. Ct. Anne Arundel County Jan. 27, 1981), *rev'd*, 50 Md. App. 217, 437 A.2d 661 (1981), *aff'd*, 295 Md. 120, 453 A.2d 1207 (1983).

13. Connor v. Hauch, Law No. 1100608 at 1, 3.

14. Connor v. Hauch, 50 Md. App. 217, 220-25, 437 A.2d 661, 663-65 (1981). The court discussed the philosophy of workers' compensation laws, and the distinction between employer-employee disputes and employee-employee disputes. The Maryland Act does not immunize co-employees from such suits. Leonard v. Sav-a-Stop Serv., Inc., 289 Md. 204, 208, 424 A.2d 336, 337 (1981).

15. *Connor*, 50 Md. App. at 225, 437 A.2d at 665.

16. *Hauch*, 295 Md. at 123, 453 A.2d at 1209.

17. *Id.* at 125, 453 A.2d at 1210.

18. *Id.*

19. "[E]ven in traditional *lex loci delicti* jurisdictions, [courts] have applied the workmen's compensation law of the forum state." *Id.* at 128, 453 A.2d at 1212.

public policy considerations in co-employee suits.[20] In *Hauch*, the court emphasized the policies of workers' compensation statutes and based its decision on the presence of "greater Maryland interests."[21] Such considerations form the basis of modern choice of law analysis,[22] and the court's discussion resembles an interest-analysis approach to resolving the choice of law issue.[23] Hence, an understanding of the impact of the decision in *Hauch* requires an understanding of both lex loci delicti and interest analysis.

II. BACKGROUND: APPROACHES TO CONFLICT OF LAWS

A. Lex Loci Delicti

The first Restatement of Conflict of Laws outlines a mechanical approach to resolving conflicts of laws, which consists of specific rules for determining the applicable law in various types of cases.[24] The rules derive from the theory of "vested rights" and require courts to apply the law of the place where the plaintiff's right of action arose.[25] Thus, the

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20. *Id.* at 132-33, 453 A.2d at 1213-14.

21. *Id.* at 133, 453 A.2d at 1214.

22. *See infra* note 62 and accompanying text.

23. *See infra* text accompanying notes 152-64.

24. *Compare* RESTATEMENT OF CONFLICT OF LAWS § 225 (1934) ("The validity and effect of a mortgage on land is determined by the law of the state where the land is.") *with id.* § 265 ("The validity and effect of a mortgage of a chattel are determined by the law of the state where the chattel is at the time when the mortgage is executed.").

25. Professor Joseph H. Beale developed the "vested rights" theory, according to which laws protect an individual's interests by creating a right that, in turn, is protected by providing a cause of action for violation of the right. J. BEALE, A TREATISE ON THE CONFLICT OF LAWS § 8A.7, at 64 (1935). Beale considered "[t]he primary purpose of law [to be] the creation of rights, and the chief task of the Conflict of Laws to determine the place where a right arose and the law that created it . . . ." *Id.* § 8A.8, at 64. Consequently, his treatise included extensive rules for choice of law in various areas of law. *See, e.g., id.* Ch. 9, topic 1 (torts); *id.* Ch. 8 (contracts); *id.* Ch. 7 (property).

A fundamental criticism of Beale's approach concerned its lack of practical value because Beale failed to address the actual practice of courts in deciding choice of law problems. For example, "apparently few courts have directly said that they were enforcing a foreign-created right. Such expressions are found chiefly in texts." Cook, *The Logical and Legal Bases of the Conflict of Laws*, 33 YALE L.J. 457, 485 (1924). *See* W. RICHMAN & W. REYNOLDS, UNDERSTANDING CONFLICT OF LAWS 109 (1984) ("[F]irst Sociological Jurisprudence, and then Legal Realism, had taught that law was and should be functional, and that legal rules should be tailored to serve societal goals. Because Beale's territorial system did not inquire into the purposes behind the competing substantive law rules, the system did not satisfy the mandate of twentieth century jurisprudence.").

The vested rights approach has been criticized also as "oversimplified and inaccurate," especially when a court is trying to choose the applicable law for a tort involving "wrongful conduct in one state and injurious effects in another." von Mehren, *Recent Trends in Choice-of-Law Methodology*, 60 CORNELL L. REV. 927, 930 (1975). The Restatement attempted to ameliorate the problem by including specific rules for determining the place of wrong in various situations. RESTATEMENT OF CONFLICT OF LAWS § 377 note (1934).

rule for tort cases, lex loci delicti, requires a court to apply the law of the place where the last act necessary to create liability occurred.[26] Initially, courts appreciated this rule because it appeared to provide certainty and predictability in an otherwise confusing area of the law.[27] Once a court determined where the wrong occurred, it applied that state's law.[28]

The disadvantage of lex loci delicti became apparent when the rule prevented a forum from recognizing an otherwise cognizable claim because the jurisdiction in which the injury occurred refused to recognize that claim.[29] This result seemed particularly unfair when all the parties resided in the forum, but the accident occurred in a state that precluded recovery.[30] In *White v. King*,[31] for example, two Maryland residents filed suit for injuries incurred in Michigan when the car in which they were riding, driven by another Maryland resident, went off the road.[32] Under Michigan's guest statute,[33] the plaintiffs could recover only by proving that the defendant was grossly negligent.[34] Maryland law, which does not include a guest statute, requires the plaintiff to prove

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26. RESTATEMENT OF CONFLICT OF LAWS §§ 377, 384 (1934).

27. *See, e.g.*, Friday v. Smoot, 58 Del. 488, 491, 211 A.2d 594, 596 (1965) (adoption of Second Restatement's approach would "substitute for a rule which was easy of application one where all manner of gradations of important contacts may be present.").

28. In *Hauch v. Connor*, the court noted the value of lex loci delicti in providing "predictability and certainty as to which state's tort law will govern." 295 Md. at 125, 453 A.2d at 1210. Additionally, the rule "recognizes the legitimate interests" of the foreign state "in the form of police protection, medical assistance and highway maintenance . . . whenever an automobile collision occurs within its borders." *Id.*

29. *E.g.*, Dawson v. Dawson, 224 Ala. 13, 15, 138 So. 414, 415 (1931) (interspousal tort suit, permitted under laws of marital domicile, dismissed because precluded by law of place of wrong).

30. *See, e.g.*, Alabama Great S. R.R. Co. v. Carroll, 97 Ala. 126, 11 So. 803 (1892). The plaintiff's decedent, an Alabama resident employed by an Alabama corporation, was killed in Mississippi as a result of fellow employees' negligent inspection of train equipment in Alabama. *Id.* at 127, 11 So. at 803-04. Alabama had an employers' liability statute that would have permitted an award of damages, but Mississippi law precluded any recovery for the death. *Id.* at 128, 11 So. at 805. Although Mississippi's sole contact with the case was that the decedent suffered his injuries there, the Alabama court applied Mississippi law pursuant to the rule of lex loci delicti and barred recovery. *Id.* at 132, 11 So. at 809.

31. 244 Md. 348, 223 A.2d 763 (1966).

32. The driver, who had refused one passenger's repeated offers to relieve him, apparently fell asleep at the wheel after driving almost the entire distance from Maryland to Michigan. *Id.* at 358-60, 223 A.2d at 769-70.

33. MICH. COMP. LAWS § 257.401 (1970), (MICH. STAT. ANN. § 9.2101 (Callaghan 1960)).

34. The plaintiffs contended that the question whether they were guests or passengers for hire should have been submitted to the jury. 244 Md. at 351, 223 A.2d at 765. The Court of Appeals of Maryland found, however, that the plaintiffs were, as a matter of Michigan law, guests of the defendant. *Id.* at 356, 223 A.2d at 768. Under the Michigan statute, guests transported without payment had no cause of action against their hosts in case of an accident, unless the accident was caused by the host's "gross negligence or wilful and wanton misconduct." MICH. COMP. LAWS § 257.401 (1970) (MICH. STAT. ANN. § 9.2101 (Callaghan 1960)).

only ordinary negligence.[35] Reasoning that the certainty afforded by following the rule of lex loci delicti outweighs the hardships the rule sometimes causes,[36] the Court of Appeals rejected the plaintiffs' argument that Maryland law should apply.[37] The court also stated its view that the recommended alternative approach to conflicts of law[38] was not yet sufficiently developed to warrant judicial adoption.[39] Therefore the court held that the plaintiffs in *White* must prove gross negligence, although they would have been able to recover by showing only ordinary negligence if the accident had occurred in Maryland.[40]

The arbitrariness of choosing the law applicable to a suit on the basis of the location of the underlying occurrence without considering other relevant aspects of the case[41] led some courts to use "escape de-

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35. Dashiell v. Moore, 177 Md. 657, 664-65, 11 A.2d 640 (1940); Fitzjarrel v. Boyd, 123 Md. 497, 505, 91 A. 547, 549 (1914).

36. "Hardship may result in a particular case, but that, unfortunately, is true under any general legal principle. Certainty in the law is not so common that, where it exists, it is to be lightly discarded." 244 Md. at 355, 223 A.2d at 767. At the same time, the court acknowledged that certainty in the law, at least insofar as its purpose is that people will know the consequences of their actions, "has little bearing on the commission of unintentional torts." *Id.*, 223 A.2d at 765.

37. *Id.*

38. The plaintiffs had urged the court to abandon lex loci delicti in favor of the "most significant relationship" test enunciated in the Second Restatement. Brief for Appellants at 8, White v. King, 244 Md. 348, 223 A.2d 763 (1966). That approach directs the court to analyze the contacts of each interested state with the accident or the parties, in terms of those contacts' relative importance, to determine which state's law should govern the issue as to which the conflict exists. Restatement (Second) of Conflict of Laws § 145 (1971).

39. In the court's view, the approach to conflicts of laws that should replace lex loci delicti needed additional time to develop adequately. Consequently, the court felt it preferable to "leave any change in the established doctrine to the Legislature." 244 Md. at 355, 223 A.2d at 767.

At the same time, the Court of Appeals of Maryland has used the Second Restatement's approach to a usury issue in a contract case. Kronovet v. Lipchin, 288 Md. 30, 415 A.2d 1096 (1980). Noting the general practice of recognizing party autonomy in choosing the law to apply to contracts, the court found further support for giving effect to the parties' choice of law in the inclusion of a party autonomy provision in RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 187 (1971). *Id.* at 43-44, 415 A.2d at 1104-05. The recognition of the Second Restatement's approach in this instance appears to conflict with the court's usual refusal to recognize it. However, the Uniform Commercial Code, which has been adopted in Maryland, also provides for party autonomy in choice of law. MD. COM. LAW CODE ANN. § 1-105(1)(1983). Thus, the court could have found, although it did not expressly do so, that the Maryland legislature has indicated its approval of an approach to resolving conflicts of law in contract settings that permits party autonomy.

40. *See id.* at 360, 223 A.2d at 770 (under Michigan law, plaintiffs were guests of defendant).

41. For example, in Alabama Great S. R.R. Co. v. Carroll, 97 Ala. 126, 11 So. 803 (1892), the negligent act occurred in Alabama, where the plaintiff resided and where the defendant corporation was incorporated, but the *injury* occurred in Mississippi. *Id.* at 127, 11 So. at 804-04. Mississippi law imposed no liability on the defendant-employer, while Alabama law provided recovery under its employers' liability act. *Id.* at 131, 11 So. at 805. The court held

vices"—manipulative techniques for reaching a more desirable outcome than lex loci delicti would permit.[42] Characterization, public policy, and the distinction between substance and procedure are the most common escape devices.[43]

1. Characterization.—In traditional conflicts analysis, different rules apply to different areas of law. Thus when deciding which law to apply, the court first characterizes the case according to the area of law it concerns. When a court chooses one label rather than another to avoid an undesirable result, it uses its characterization of the case as an escape device.[44] For example, an injured workers' claim might be considered a suit in either tort or contract.[45] Under the First Restatement's approach, the law of the place of wrong would apply if the case is viewed as one in tort,[46] while the law of the place of the employment contract's making or of the place of its performance would apply if the action is viewed as one in contract.[47] If lex loci delicti would preclude recovery, but lex locus contractus would not, a court might characterize the case as a contract action to avoid the undesirable result of using lex loci delicti.[48] Because the court has discretion to determine whether a case concerns contract or tort, it may manipulate the outcome of each case by selecting the characterization which yields the preferred result.

2. Substance or procedure.—By characterizing an issue as procedural or substantive, the courts often employ a variant of the characterization escape device. Rather than describe an issue in terms of an area of law (e.g., as a suit in contract rather that tort), the court decides whether an

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that the plaintiff had no cause of action because the law of Mississippi governed the suit. *Id.* at 140, 11 So. at 809.

42. *See* R. LEFLAR, AMERICAN CONFLICTS LAW § 89 (3d ed. 1977) ("the true explanation of manipulative cover-ups . . . is that the court is seeking a just result in the particular case").

43. These are not by any means the only escape devices courts use, however. A court may, for example, employ renvoi to avoid applying the substantive tort law of the place of wrong. Renvoi involves the court's looking at the choice-of-law rules, as well as the substantive law, of the place of the accident. If those rules refer the issue to the forum state's law, the court is able to apply its own substantive law. Griswold, *Renvoi Revisited*, 51 HARV. L. REV. 1165, 1166-70 (1938).

44. R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS § 6.14, at 294 (2d ed. 1980).

45. *See* R. LEFLAR, *supra* note 42, at § 160. The tort characterization emphasizes the injury, while the contract label focuses on the employer-employee relationship.

46. RESTATEMENT OF CONFLICT OF LAWS §§ 378, 384 (1934).

47. *Id.* at § 311 (law governing questions of validity of contract); *id.* at § 355 (law governing question of performance).

48. *E.g.*, Scott v. White Eagle Oil & Ref. Co., 47 F.2d 615 (D. Kan. 1930).

issue is one of substantive or procedural law.[49] Forum law governs procedural issues; territorial rules govern issues of substantive law.[50] The application of statutes of limitation illustrates the potential for manipulation of this distinction. Although such statutes are usually considered to be procedural,[51] the time limitation of a wrongful death statute is generally considered to be a substantive rule for choice of law purposes.[52] The justification for the distinction is that the limitation on the wrongful death action qualifies a statutorily created right, but the usual statute of limitations affects only a remedy.[53] By that kind of reasoning, a court could declare that a particular statute of limitation qualifies a right and thus is a substantive issue governed by the law of the place of an occurrence or, conversely, that it only affects a remedy and thus is a procedural issue governed by forum law.[54]

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49. R. WEINTRAUB, *supra* note 44, at § 3.2C; G. STUMBERG, CONFLICT OF LAWS 155 (2d ed. 1951).

50. Choice-of-law rules such as lex loci delicti determine which state's law governs substantive law issues; characterization of an issue as procedural avoids application of choice-of-law rules altogether. *See* G. STUMBERG, *supra* note 49, at 134.

51. R. WEINTRAUB, *supra* note 44, § 3.2C2 at 59; G. STUMBERG, *supra* note 49, at 147-49.

52. RESTATEMENT OF CONFLICT OF LAWS § 605 comment a (1934).

53. The Rhode Island Supreme Court expressed this view as follows:

> Where a statute creates an entirely new right of action that did not exist at common law and expressly attaches thereto, without any exception, a proviso that the action shall be brought within a specified time, such proviso ordinarily will be construed as a condition imposed upon the created right of action and not merely as a statute of limitations affecting the remedy only.

Tillinghast v. Reed, 70 R.I. 259, 263, 38 A.2d 782, 783 (1944).

Whether a particular statute of limitations is enacted with legislation creating a right of action or as a separate statute, the general purpose of limitations is to preclude suits on stale claims. *See* Harig v. Johns-Manville Prod. Corp., 284 Md. 70, 75, 394 A.2d 299, 302 (1978) (rationale underlying statutes of limitations includes encouraging promptness in instituting actions, suppressing stale or fraudulent claims, and avoiding inconvenience). Moreover, the rule that procedural issues are governed by the law of the forum is based on the virtual impossibility of importing foreign procedure into a court. RESTATEMENT OF CONFLICT OF LAWS ch. 12 introductory note (1934). The difficulty of applying another state's statute of limitations, however, is neither greater nor less whether the statute is general or specific. Thus, the distinction between statutes that qualify rights and those that only affect remedies is artificial at best.

54. For example, the Second Circuit stated that a statute of limitations is substantive rather than procedural if "the limitation is 'directed to the newly created liability so *specifically* as to warrant saying that it qualified the right.'" Bournias v. Atlantic Maritime Co., 220 F.2d 152, 156 (2d Cir. 1955) (quoting Davis v. Mills, 194 U.S. 451, 454 (1904)) (emphasis in original).

Survival statutes, similarly, have been treated both as procedural and as substantive. In Orr v. Ahern, 107 Conn. 174, 139 A. 691 (1928), a Connecticut resident was injured in New York, but the defendant died before the plaintiff brought suit. *Id.* at 175, 139 A. at 691-92. Connecticut, the forum state, would have allowed the plaintiff to bring his suit against the defendant's estate. Under New York law, which did not include a survival statute the cause of action no longer existed upon the death of a party. *Id.* at 175-76, 139 A. at 692. The Connecticut court treated the issue as one governed by the lex loci delicti, stating:

3. Public Policy.—A court that uses public policy as an escape device asserts that the foreign law is so contrary to local public policy that the forum is justified in refusing to apply the other state's law.[55] In a case involving only residents of the forum, a court may decide that applying lex loci delicti would eliminate a protection to which its citizens are entitled. For example, in *Mertz v. Mertz*[56] a wife sued her husband in their home state for injuries received in another state. Forum law precluded interspousal suits, but the place of wrong allowed them.[57] The application of lex loci delicti would violate the public policy of the forum—a resident would be denied the protection from suit that the state sought to promote.[58] Reasoning that any change in the rule should be made by the legislature[59] and that courts may not refuse to give effect to expressed public policy,[60] the court refused to permit the suit.[61]

B. Interest Analysis

A court that is applying interest analysis[62] considers the various policies behind the conflicting laws and each state's interest in promot-

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New York created the right of action for this wrong. The power which gave the right could take it away. When by its law the death of the injuring person abated the right of action for this wrong, the right no longer existed in that jurisdiction, nor thereafter in any other jurisdiction.

Id. at 178, 139 A. at 692.

The California Supreme Court, on the other hand, held survival statutes to be concerned with procedures for enforcing legal claims and governed, therefore, by forum law. Grant v. McAuliffe, 41 Cal.2d 859, 866, 264 P.2d 944, 949 (1953). Under the law of Arizona, the place of the accident giving rise to the suit, the action would have been barred, because commenced after the tortfeasor's death. *Id.* at 862, 264 P.2d at 946.

55. R. WEINTRAUB, *supra* note 44, at § 3.6.

56. 271 N.Y. 466, 3 N.E.2d 597 (1936).

57. *Id.* at 469, 3 N.E.2d at 597-98.

58. New York, the forum state, based its refusal to entertain tort suits between spouses on the common law unity of husband and wife. *Id.*, 3 N.E.2d at 598. Of course, by protecting the husband from suit by the wife, the court precluded recovery by the wife, who was also a New York resident.

59. *Id.*

60. *Id.* at 471-73, 3 N.E.2d at 598-99.

61. *Id.* at 473-74, 3 N.E.2d at 600.

62. Brainerd Currie presented this approach to conflict of laws in Currie, *Married Women's Contracts: A Study in Conflict-of-Laws Method*, 25 U. CHI. L. REV. 227, 232-33 (1958). Professor Currie suggested that forum law be applied in any case of a true conflict. *See infra* note 67. Subsequent theorists who developed other forms of modern analysis similarly focused on the interests of each state in the resolution of a case. For example, Judge Fuld, writing for the New York Court of Appeals, expressed the opinion that "[j]ustice, fairness and the 'best practical result' . . . may best be achieved by giving controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties has the greatest concern with the specific issue raised in the litigation." Babcock v. Jackson, 12 N.Y.2d 473, 482, 240 N.Y.S.2d 743, 749, 191 N.E.2d 279, 284 (1963)(citation omitted). Professor Leflar suggested that courts consider choice-influencing factors, including predictabil-

ing those policies in the particular case.[63] The central feature of interest analysis is the distinction between "true" and "false" conflicts.

1. True Conflict.—A true conflict exists if some policy of each state would be furthered by applying its rule to the case, and the promotion of either state's statutory or common-law policy would adversely affect the other state's interest in promotion of its own policy.[64] The court may resolve the conflict by applying forum law,[65] on the grounds that no good reason exists for applying the other state's law[66] and that because the court is more familiar with the policy of its own state, it can more accurately promote that policy.[67] Alternatively, the court may continue its analysis of the true conflict to determine which state's interest would be more impaired if its law were *not* applied[68] and then apply the law of that state.[69] The "comparative impairment" approach allows the court to distinguish between two interested states on the strength of their respective interests and thereby assures application of the law of the state with the greater interest.[70]

Lilienthal v. Kaufman[71] illustrates the use of interest analysis to resolve a true conflict by application of a forum's law. Defendant, an Oregon resident, had executed and delivered two promissory notes in California.[72] An Oregon court previously had declared the defendant a

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ity, simplicity, and advancement of the forum's interests, in selecting the "better law" to apply to an issue. LEFLAR, *supra* note 42, at § 96.

63. This focus derives from Brainerd Currie's view of law as purposive in nature; that is, the laws of a jurisdiction are intended to achieve particular goals in society. Currie, *On the Displacement of the Law of the Forum*, 58 COLUM. L. REV. 964, 1017 (1958).

64. Currie, *supra* note 62, at 251-52.

65. This is the resolution that Currie, who opposed courts' balancing of state interests, recommended. Currie, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. CHI. L. REV. 9, 77 (1958) ("[C]hoice between the competing interests of coordinate states is a political function of a high order, which ought not, in a democracy, to be committed to the judiciary . . . ."); Currie, *Notes on Methods and Objectives in the Conflict of Laws*, 1959 DUKE L.J. 171, 176 ("[A]ssessment of the respective values of the competing legitimate interests of two sovereign states . . . is a political function of a very high order. This is a function that should not be committed to courts in a democracy. It is a function that the courts cannot perform effectively, for they lack the necessary resources.").

66. Currie, *supra* note 62, at 261.

67. Currie stated that a court should apply forum law to a true conflict because "[i]n this way it can be sure at least that it is consistently advancing the policy of its own state." *Id.* This statement seems to suggest, conversely, that the court's unfamiliarity with foreign law impairs its ability to advance the policy of the other state.

68. Baxter, *Choice of Law and the Federal System*, 16 STAN. L. REV. 1, 18 (1963).

69. *Id.*

70. For an example of the comparative-impairment technique's application, see *id.* at 12-14.

71. 239 Or. 1, 395 P.2d 543 (1964).

72. *Id.* at 2-3, 395 P.2d at 544-45.

spendthrift and thus the transactions were void under Oregon law. But California law did not recognize the disability of a spendthrift and would have enforced payment of the notes.[73] Seeking enforcement of the notes in Oregon, the plaintiff argued that under the doctrine of lex locus contractus California law should govern the action.[74] After examining the policies of each state,[75] the court concluded that a true conflict existed.[76] Applying California law to uphold the validity of the notes would undermine Oregon's interests in preventing spendthrifts from becoming public charges and in protecting their families.[77] Similarly, if Oregon law applied to void the transaction, California's interest in promoting creditors' rights would be adversely affected.[78] The choice of either state's law would advance one state's policy while harming the other's policy. The court applied Oregon (forum) law, because the "interests of neither jurisdiction are clearly more important than those of the other."[79]

A true conflict also existed in *Bernhard v. Harrah's Club*,[80] and the California court, rather than applying the law of the forum, used comparative-impairment analysis to choose the applicable law. Two California residents had driven to a night club in Nevada,[81] become intoxicated, and driven back to California, where they collided with a motorcycle. The injured driver of the motorcycle, also a California resident, sued the Nevada tavern keeper.[82] California law would allow the suit, in furtherance of the state's policy of promoting safety on its high-

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73. *Id.* at 3-6, 395 P.2d at 545.

74. California was both the place of the contracts' making, because the notes were executed and delivered there, and of their performance, because the defendant was to pay the notes there. *Id.* at 7-8, 395 P.2d at 545-46.

75. *Id.* at 14-16, 395 P.2d at 548-49. Oregon had interests in protecting the spendthrift's family, in protecting the public from the expenses incurred if the spendthrift (and his family) had become a public charge, in "protecting innocent persons from fraud," and in promoting a reputation for honoring agreements. *Id.* at 14-15, 395 P.2d at 548-49. California had interests in "having its citizen creditor paid" and in promoting enforceability of its contracts. *Id.* at 15, 395 P.2d at 549.

76. *Id.* at 16, 395 P.2d at 549.

77. *See supra* note 75.

78. *See supra* text accompanying note 64.

79. 239 Or. at 16, 395 P.2d at 549.

80. 16 Cal.3d 313, 546 P.2d 719, 128 Cal. Rptr. 215 (1976).

81. The Nevada night club had solicited California patrons in advertisements to which the California couple responded. They spent the evening at the bar and reached a point of intoxication that made them incapable of driving home safely. The bar continued to serve them, and on their way home they collided with the plaintiff. *Id.* at 315-16, 546 P.2d at 720, 128 Cal. Rptr. at 216.

82. Plaintiff asserted that defendant was negligent in continuing to serve persons who were already intoxicated, and that defendant's conduct was the proximate cause of plaintiff's injuries. *Id.* at 316, 546 P.2d at 720, 128 Cal. Rptr. at 216.

ways.[83] Nevada law precluded dramshop actions, because its policy was to protect tavern keepers from liability resulting from a customer's negligence.[84] Because the plaintiff was a California driver and the defendant was a Nevada tavern keeper, application of either state's law to protect its own resident would harm the other state's interest.[85]

The court concluded that applying Nevada law would impair California's interests more than applying California's law would impair Nevada's interests.[86] Because Nevada law already imposed criminal liability on bartenders for serving an obviously intoxicated person, the imposition of civil liability would not prohibit any conduct that was not already prohibited; in other words, the standard of conduct would not be changed.[87] In addition, California could not effectively promote its policy of safety on its highways if bartenders outside the state were exempt from liability although they actively solicited the business of California residents.[88] Thus, the court concluded that California's interest in having its law applied was greater.

2. False Conflict.—A false conflict exists when only one state is interested in having its law applied to the case.[89] If the application of one state's law would advance its interest without adversely affecting the other state's interest, the court applies the law of the state whose interests will be advanced.[90] If the application of one state's law would not advance its own policy but would undermine the interest of the other state,[91] the court applies the law of the state whose interest would be injured. That is, if only one state's interest will be affected, no matter which state's law the court applies, the apparent conflict is a false one, and the court applies the law of the affected state.

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83. *Id.* at 317, 546 P.2d at 721, 128 Cal. Rptr. at 217.

84. *Id.* at 318, 546 P.2d at 721, 128 Cal. Rptr. at 217.

85. Application of California law, by allowing its resident to sue, would further its policy of promoting safety on its highways but would undermine the protection ordinarily given to a Nevada tavern keeper. Similarly, applying Nevada law would protect its resident bartender but also would subvert California's interest in safe highways.

86. *Id.* at 323, 546 P.2d at 725-26, 128 Cal. Rptr. at 221-22.

87. *Id.*, 546 P.2d at 725, 128 Cal. Rptr. at 221.

88. *Id.* at 322-23, 546 P.2d at 725, 128 Cal. Rptr. at 221.

89. Currie, *supra* note 62 at 251-52; R. LEFLAR, *supra* note 42, § 93, at 187.

90. Currie, *supra* note 62 at 251-52.

91. Currie stated the false conflict situations in pairs:

Domestic interest advanced without detriment to foreign interests
Foreign interest advanced without detriment to domestic interests

* * * *

Foreign interest subverted with no advancement of domestic interests
Domestic interest subverted without advancement of foreign interests

Id. at 242, table 6, groups I and II, V and VI.

In *Babcock v. Jackson*,[92] the Court of Appeals of New York was presented with a false conflict. Three New York residents were injured in an automobile accident in Ontario.[93] The Ontario guest statute barred recovery by the passengers against the driver, while New York encouraged such claims.[94] The policy behind the Ontario statute was to prevent fraud and collusion against insurance companies.[95] Because those interests would be advanced only when the accident involved Ontario residents, no Ontario interest would be advanced by applying its law to New York residents.[96] On the other hand, New York policy would be advanced by application of its law, because that would promote the recovery intended for its residents.[97] Hence, the court applied New York law.[98]

III. ANALYSIS

The opinion of the Court of Appeals in *Hauch v. Connor* may be the first step in a transition from adherence to the rigid rule of lex loci delicti to adoption of interest analysis for resolution of choice-of-law problems.[99] The court refused to characterize the issue for which a rule was to be chosen as a tort issue and used "public policy" as a device to avoid following lex loci delicti.[100] The court relied largely on cases that had been decided by means of interest analysis.[101] And finally, the court reached the same result that that modern analysis would have yielded.[102]

A. Use of Escape Devices

The Court of Appeals asserted that *Hauch v. Connor* was a workers'

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92. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

93. *Id.* at 476-77, 191 N.E.2d at 280, 240 N.Y.S.2d at 745.

94. *Id.* at 482-83, 191 N.E.2d at 284, 240 N.Y.S.2d at 750.

95. The statute was intended to prevent a driver and a passenger from "manufacturing" a claim against the driver's insurance company. *Id.*

96. *Id.*

97. *Id.* at 483, 191 N.E.2d at 284-85, 240 N.Y.S.2d at 751. The case presented a false conflict. The application of New York law would advance its policy and have no adverse effect on Ontario's interest; application of Ontario law would not further its interest but would injure New York policy. *See supra* text accompanying note 90.

98. 12 N.Y.2d at 484-85, 191 N.E.2d at 285, 240 N.Y.S.2d at 752.

99. The court asserted its continued adherence to the rule of lex loci delicti, holding that Delaware law would govern all issues of substantive tort law in the case. 295 Md. 120, 123-25, 453 A.2d 1207, 1209-10. But the court also held that lex loci delicti was inapplicable to the issue of whether the plaintiffs could bring suit in Maryland. *Id.* at 134, 453 A.2d at 1214.

100. *See infra* notes 103-20 and accompanying text.

101. *See infra* notes 130, 138 and accompanying text.

102. *See infra* text accompanying notes 152-64.

compensation case, not a tort case.[103] That characterization allowed the court to avoid the rule of *White v. King*,[104] which would have required the application of Delaware law to bar the suit.[105] However, the facts in *Hauch* are those of a fairly ordinary tort action—automobile passengers sued their driver for injuries allegedly caused by the driver's negligence.[106] Although the Maryland statute permitted the plaintiffs to receive workers' compensation benefits,[107] *Hauch* is not a typical workers' compensation case. A typical case would be a suit by the injured worker against his employer; indeed, workers' compensation statutes were enacted to remove common-law bars to recovery from an employer.[108] But those bars did not preclude the worker's recovery in an action against a third party, including a fellow employee, whose negligence caused the injury.[109] Thus, the Court of Appeals has stated that the Maryland Workmen's Compensation Act provision dealing with actions against third-party tortfeasors did not create a new right of action, but only governs the exercise of the pre-existing right.[110]

The court's characterization of *Hauch* as a workers' compensation case removed it from areas of clearly established Maryland doctrine regarding choice of law and allowed the court to reach the result indicated

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103. 295 Md. at 125, 453 A.2d at 1210.

104. 244 Md. 348, 223 A.2d 763 (1966). *See supra* notes 31-40 and accompanying text.

105. DEL. CODE ANN. tit. 19, §§ 2304, 2363 (1979); Groves v. Marvel, 59 Del. 73, 213 A.2d 853 (1965) (person employed by same employer is a "co-employee" included within statutory immunity of the workers' compensation law).

106. *See supra* notes 9-10 and accompanying text.

107. *See supra* text accompanying note 10.

108. At common law, an injured employee had to prove that:

> [T]he injury was due solely to the negligence of the employer, and he was confronted with the harsh defenses of contributory negligence, negligence of his fellow-servant and assumption of risk. The employee and his dependents frequently failed to secure a verdict because of the difficulty in establishing the liability of the employer, without any fault on his [the employee] part, thus resulting in financial hardship. The employer . . . was subject to high monetary verdicts.

M. PRESSMAN, WORKMEN'S COMPENSATION IN MARYLAND § 1-1, at 1 (2d ed. 1977). The Maryland Workmen's Compensation Act was expressly designed to counteract those problems. MD. ANN. CODE art. 101, preamble (1957).

Workers' compensation statutes generally operate as a form of compromise between employer and employee, in that the employer agrees to provide certain compensation for the injured employee, who agrees in return to waive his common law right to sue his employer. Jonathan Woodner Co. v. Mather, 210 F.2d 868, 873-74 (D.C. Cir. 1954). The workers' compensation statute is, in effect, an incidental term of the employment contract. *See* Hunyadi v. Stratfield Hotel, 143 Conn. 77, 84, 119 A.2d 321, 324 (1955) (employees' "right to compensation under the Workmen's Compensation Act issues from their contract with their employer").

109. M. PRESSMAN, *supra* note 108, at § 6-2(1).

110. Taylor v. State, 233 Md. 406, 411, 197 A.2d 116, 118 (1964).

by public-policy analysis.[111] To support its consideration of public policy, the court relied on its previous decision in *Hutzell v. Boyer*.[112] In that case, the Court of Appeals found Virginia's workers' compensation statute, which bars co-employee suits, obnoxious to Maryland's policy of promoting tort recovery to prevent injured persons from becoming public charges.[113] Consequently, the court applied Maryland law and permitted the action.[114] But in *Hutzell* the accident causing the plaintiff's injuries had occurred in Maryland;[115] thus, lex loci delicti also required application of Maryland law to the suit.[116] In contrast, the *Hauch* court's public-policy analysis resulted in the application of Maryland law although lex loci delicti would have required that Delaware law be applied.[117]

Moreover, the court's discussion in *Hutzell* referred to the workers' compensation statute as an issue related to the co-employee tort action, but did not treat the action as one distinct from tort.[118] In contrast, Delaware treats workers' compensation as an area distinct from tort.[119] Hence, the Maryland court characterized *Hauch v. Connor* as a Delaware court would have done had the suit been filed in Delaware; however, the characterization to be applied to a particular case is ordinarily a matter

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111. The court noted that "[t]he rule of *lex loci delicti* is well established in Maryland." 295 Md. at 123, 453 A.2d at 1209. Thus, if the court had characterized the issue as one of tort law, it probably would not have considered public policy, since the established choice-of-law rule would have dictated the court's decision.

112. 252 Md. 227, 249 A.2d 449 (1969).

113. *Id.* at 233, 249 A.2d at 452.

114. *Id.*

115. Using a company truck, the parties drove each day from their homes in Maryland to their job in Virginia. As the parties returned home one afternoon, defendant Hutzell fell asleep at the wheel, and the truck went off the road in Maryland, hitting a utility pole. *Id.* at 229-30, 249 A.2d at 450-51.

116. *Id.* at 232, 249 A.2d at 452.

117. *See supra* text accompanying note 26. The court extended its public-policy rationale by analogizing workers' compensation acts to statutes of limitations, which also are generally governed by forum law. In the court's view, "Although the rationale often given for the rule that the law of the forum governs the applicable statute of limitations is that the matter is 'procedural' . . . the better reason is that it implicates the public policy of the forum rather than the public policy of another jurisdiction." 295 Md. at 133 n.10, 453 A.2d at 1214 n.10.

Under this reasoning, almost any statute could fit into the analogy and, therefore, allow a court to apply forum law. For example, the existence of a guest statute reflects a state's policy of protecting drivers from lawsuits against them by their passengers. *See* Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1, 36 ("The guest statute expresses [the state's] policy for the protection of defendants.").

118. 252 Md. at 232-33, 249 A.2d at 452.

119. *See, e.g.*, Ward v. General Motors Corp., 431 A.2d 1277, 1279 (Del. Super. Ct. 1981) (because workers' compensation is sole remedy available for injuries covered by Workmen's Compensation Act, employee may not sue co-employee for those injuries).

of *forum* law.[120] The court's use of the Delaware characterization of workers' compensation and the discussion of public policy in *Hauch* thus operated as escape devices to allow the court to avoid the unjust result that would have been mandated by lex loci delicti.

Before adopting modern analysis as an approach to conflict-of-laws issues, the New York Court of Appeals similarly used escape devices to avoid the effect of lex loci delicti.[121] In *Kilberg v. Northeast Airlines, Inc.*,[122] for example, the court avoided a damages limitation it considered "unfair and anachronistic"[123] by applying forum law to the damages issue in a wrongful death action.[124] The plaintiff's decedent had died in an airplane crash in Massachusetts, and that state's wrongful death statute limited recovery to a maximum of $15,000.[125] The New York court acknowledged that wrongful death actions, which are created by statute, are governed by the law of the place of the wrong.[126] But the court noted the injustice and anomalism of subjecting New York citizens to the vagaries of the laws of other states on the basis of the mere fortuity of the place of injury.[127] Further, New York law contained a clear statement of its policy not to limit the damages that are recoverable for wrongful death.[128] Therefore, the court concluded that it

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120. *See supra* text accompanying note 48; *cf. infra* note 129 (whether an issue relates to substantive or procedural law is a matter governed by forum law).

121. The New York court adopted modern analysis in Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963). The parties to that case had travelled from New York to Ontario, where their car went off the road and collided with a stone wall. Ontario had a guest statute and, therefore, precluded a tort action against the driver by the passengers for their injuries. New York, the place of their residence, however, allowed these suits. *Id.* at 476-77, 191 N.E.2d at 280, 240 N.Y.S.2d at 745. Application of New York's law would advance its policy of promoting recovery for tort victims without undermining Ontario's policy of protecting its residents from collusive suits. On the other hand, application of Ontario's law would undermine New York's policy without advancing that of Ontario. *Id.* at 482-83, 191 N.E.2d at 284, 240 N.Y.S.2d at 750. Therefore, the court applied New York law and permitted the suit to go forward. *Id.* at 484, 191 N.E.2d at 285, 240 N.Y.S.2d at 752. The case, of course, presented a false conflict. *See supra* text accompanying notes 92-98.

122. 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). This case was decided after the court rejected lex loci delicti and adopted a center of gravity approach in Auten v. Auten, 308 N.Y. 155, 161, 124 N.E.2d 99, 102 (1954). The court later considered the policy interests of each state involved in Babcock v. Jackson, 12 N.Y.2d 473, 482-84, 191 N.E.2d 279, 184-85, 240 N.Y.S.2d 743, 750-52 (1963).

123. Id. at 39, 172 N.E.2d at 527-28, 211 N.Y.S.2d at 135.

124. *Id.* at 41-42, 172 N.E.2d at 529, 211 N.Y.S.2d at 137.

125. *Id.* at 38, 172 N.E.2d at 527, 211 N.Y.S.2d at 134.

126. *Id.*, 172 N.E.2d at 527, 211 N.Y.S.2d at 135.

127. The court noted that an air traveler may pass over any number of states and that an air crash may occur within the boundaries of any of them. A crash may even occur within the boundaries of a state not on the aircraft's scheduled route, if it leaves its course. *Id.* at 39, 172 N.E.2d at 527, 211 N.Y.S.2d at 135.

128. *Id.* at 39, 172 N.E.2d at 528, 211 N.Y.S.2d at 136.

should treat the measure of damages as a procedural matter governed by New York law.[129]

B. *Use of Interest-Analysis Cases*

The Court of Appeals supported its decision in *Hauch v. Connor* by pointing to two other states, Connecticut and Massachusetts, that have applied forum law to tort suits between co-employees arising from accidents outside the forum. In both of those cases, the courts determined which law to apply by analyzing the interests of each state concerned.

In *Simaitis v. Flood*[130] the Supreme Court of Connecticut expressly applied a form of interest analysis[131] and rejected the traditional rules urged on it by both plaintiff and defendant.[132] Instead, the court identified and considered the respective interests of Connecticut, which was the forum, the domicile, and the workplace of both parties, and of Tennessee, which was the location of the accident.[133] Connecticut's interests in fully compensating injured workers and in reimbursing employers who had paid compensation for injuries caused by third parties would be advanced by application of its law.[134] Tennessee's interest in limiting the liability of its resident employers and co-employees, on the other hand, would not be advanced by application of its law.[135] Consequently, Connecticut's interest in the case was greater than Tennessee's,[136] and the Connecticut court applied forum law.[137]

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129. The court also noted that the question whether a particular issue relates to substantive or procedural law is itself a matter governed by forum law. *Id.* at 41-42, 172 N.E.2d at 529, 211 N.Y.S.2d at 137.

130. 182 Conn. 24, 437 A.2d 828 (1980).

131. *Id.* at —, 437 A.2d at 832.

132. The plaintiff argued that the case should be viewed as one in contract and, thus, that Connecticut law should apply. The court rejected this approach for several reasons. First, it would preclude "successive incremental awards." Second, an employer could avoid liability by selecting where to make the employment contract; an employer would choose a place where the law favored him and not the employee. Last, co-employees do not have a contract with each other, so the approach was not appropriate in these suits. 182 Conn. at 28, 437 A.2d at 830-31.

The defendant argued that tort choice of law applied and, therefore, Tennessee law governed under lex loci delicti. The court rejected this approach because of general dissatisfaction with the doctrine, noting that it could result in temporary visitors to Connecticut receiving benefits, while Connecticut residents injured outside the state would have no remedy. *Id.* at 29, 437 A.2d at 831.

133. *Id.* at 31, 437 A.2d at 832-33.

134. *Id.*

135. *Id.*

136. The court concluded that "Tennessee has no legitimate interest in preventing Connecticut from providing the injured employee with a right of action for damages against a third party . . . ." *Id.* Because application of Tennessee law would not advance its policy,

Similarly, in *Saharceski v. Marcure*,[138] the Supreme Judicial Court of Massachusetts looked to the interests of each state with a connection to the suit, as shown by the parties' relationship to the state and their expectations concerning their legal rights.[139] The other state concerned, Connecticut, had no connection to the case except that it was the location of the accident.[140] Noting that Massachusetts was the place of employment and the domicile of the parties,[141] the Massachusetts court discounted the connection between the litigation and Connecticut as merely fortuitous.[142] Applying Massachusetts law would not harm Connecticut's interest because no Connecticut resident would be precluded from bringing suit.[143] In contrast, the Massachusetts policy of limiting recovery for injuries caused by a co-employee to the statutory workers' compensation benefits would be undermined by application of Connecticut law.[144] Furthermore, because the employment contracts were made in Massachusetts, where co-employee suits for injuries incurred in the course of employment were barred,[145] the parties could have had no

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but use of Connecticut law would further its interest in compensating resident employees, the case was a false conflict. *See supra* text accompanying notes 86-88.

This formulation could apply just as easily to a guest statute case. For example, using the facts of White v. King, 244 Md. 348, 223 A.2d 763 (1966), one could state that "[Michigan] has no legitimte interest in preventing [Maryland] from providing the injured [passenger] with a right of action for damages against [the driver]" especially when the parties live and work and maintain their relationship in Maryland. The facts in *Hauch* fit even more neatly into the model:

> [Delaware] has no legitimate interest in preventing [Maryland] from providing the injured employee with a right of action for damages against a third party, particularly where both the employee and the alleged tortfeasor are [Maryland] residents . . . the employee was hired and is principally employed in [Maryland].

137. 182 Conn. at 31, 437 A.2d at 832-33.

138. 373 Mass. 304, 366 N.E.2d 1245 (1977). In this case, the plaintiff sought application of the lex loci delicti, Connecticut, which would allow a co-employee suit. The defendant argued that the law of the place where the employment contract was made, Massachusetts, governed the case and precluded the suit. *Id.* at 305-07, 366 N.E.2d at 1246-47.

139. The court appeared to combine elements of interest analysis and the most significant relationship test, looking at the interest of each state as determined by such factors as the relationship of the parties and their expectations. *Id.* at 308-12, 366 N.E.2d at 1248-49.

140. *Id.* at 305-06, 366 N.E.2d at 1246.

141. *Id.* at 306-08, 366 N.E.2d at 1247. The parties were driving through Connecticut in the course of their employment with a Massachusetts corporation. The employer had no store in Connecticut, although its employees occasionally went to that state to pick up merchandise. *Id.* at 305, 366 N.E.2d at 1246.

142. *Id.* at 311, 366 N.E.2d at 1249.

143. Because the employees concerned lived and worked in Massachusetts, no Connecticut employee was being prevented from bringing suit. Furthermore, the Massachusetts employees had no expectation of a right to sue because they entered into their employment contracts in Massachusetts, where co-employee suits are barred. *Id.*

144. *Id.*

145. These factors closely resemble factors set forth in RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1971).

expectation of either a right to proceed against or a potential liability to co-employees. As a result, the Massachusetts court concluded that forum law should govern the case.[146]

The Maryland court's reliance on these cases in *Hauch* may signal its willingness to go beyond a rigid application of inflexible choice-of-law rules to reach a just result. Like the Connecticut and Massachusetts courts, the Maryland court phrased its conclusion in the language of interest analysis.[147] Noting the relation between the parties and Maryland,[148] the Court of Appeals concluded that "there are greater Maryland interests" in the outcome of the case.[149] On the basis of that conclusion, which expresses the fundamental concern of interest analysis,[150] the court held that Maryland law governed the case.[151]

C. *Interest Analysis Applied to* Hauch v. Connor

If the Court of Appeals had expressly adopted interest analysis, the court would have resolved the choice-of-law question in *Hauch* in the same way as the court actually did. Further, interest analysis of the case would have been similar to the court's actual opinion, because interest analysis would have focused on the public policies to be served by the application of either state's law.[152] But analysis of the actual governmental interests involved would have produced a more precisely reasoned opinion. Interest analysis would have required the court to enunciate clearly the policies that underlie the workers' compensation statute.[153]

When applying interest analysis, the court first must identify the source of the conflict between the laws of the states concerned by identifying the policies the laws promote.[154] The Maryland Workmen's Compensation Act permits suits by injured workers against third parties, including their co-employees, to promote full compensation for injuries.[155] Recognizing that workers' compensation benefits often provide

146. 373 Mass. at 316, 366 N.E.2d at 1252.

147. 295 Md. at 133, 453 A.2d at 1214.

148. The parties reside in Maryland, their place of employement is Maryland, and they filed claims for benefits under the Maryland Act. 295 Md. at 133-34, 453 A.2d at 1214.

149. *Id.* at 133, 453 A.2d at 1214.

150. *See supra* text accompanying note 62.

151. 295 Md. at 134, 453 A.2d at 1214.

152. *See supra* note 62 and accompanying text.

153. Although the court repeatedly asserted the importance of public-policy considerations to choice of law in workers' compensation cases, it never expressly stated the policies with which it was concerned. *See Hauch*, 295 Md. at 127, 132, 133, 453 A.2d at 1211, 1214.

154. *See* Currie, *supra* note 62 at 231-33.

155. The Court of Special Appeals has interpreted MD. ANN. CODE art. 101, § 58 (1957) as intending "that an injured employee may, by the combined result of his compensation claim

only limited relief, the Maryland statute "is designed to protect workers and their families from hardships inflicted by work-related injuries."[156] In addition, the statute seeks to prevent Maryland taxpayers from becoming financially responsible for the care of injured workers.[157] The Delaware prohibition of suits on work-related injuries is intended "to provide a scheme for assured compensation for work-related injuries without regard to fault and to relieve employers and employees of the expenses and uncertainties of civil litigation."[158]

The second step in applying interest analysis to a choice-of-law problem is to determine whether both, or only one, state's interests would be affected by the outcome of the case—that is, whether the case presents a "true" or a "false" conflict.[159] In *Hauch*, the apparent conflict was a false one, because only Maryland's public policy would be affected by the outcome of the case. Because none of the parties lived or worked in Delaware,[160] Delaware had no interest in protecting them from "the expenses and uncertainties of civil litigation."[161] Moreover, the provision of emergency medical care in Delaware created at least a minimal interest in compensating the hospital.[162] Consequently, Delaware's interests would not be advanced by application of Delaware law or harmed by application of Maryland law.

Maryland, however, had a substantial interest in the legal effects of the parties' employment, because they had made their employment contracts and were regularly employed in Maryland.[163] Additionally, because the plaintiffs were Maryland residents, Maryland taxpayers would provide financially for the plaintiffs if they were not fully compensated for their injuries.[164] Therefore, application of Delaware law precluding

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and a proceeding against a negligent third party, recover more than he could recover under the Act . . . ." Brocker Mfg. v. Mashburn, 17 Md. App. 327, 337, 301 A.2d 501, 506 (1973).

156. Queen v. Agger, 287 Md. 342, 343, 412 A.2d 733, 734 (1980).

157. Paul v. Glidden Co., 184 Md. 114, 119, 39 A.2d 544, 546 (1944).

158. Kofron v. Amoco Chem. Corp., 441 A.2d 226, 231 (Del. 1982). Although the court in *Kofron* only referred to an employer's immunity from suit, Groves v. Marvel, 59 Del. 73, 213 A.2d 853 (1965), had previously established that co-employees enjoyed the same immunity from suit. A further purpose of providing workers' compensation is "to shift the cost of employment injuries to the consumer as part of the cost of production." Price v. All Am. Eng'g Co., 320 A.2d 336, 341 (Del. 1974).

159. *See supra* notes 62, 89-91 and accompanying text.

160. *See supra* text accompanying note 7.

161. *See supra* note 158.

162. 295 Md. at 122, 453 A.2d at 1208.

163. *See supra* note 7 and accompanying text. The Maryland Workmen's Compensation Act is intended to protect all workers regularly employed in Maryland. MD. ANN. CODE art. 101, § 21 (1957).

164. *See supra* note 157 and accompanying text.

the suit would have directly contravened Maryland's interests in compensating injured workers.

IV. CONCLUSION

In *Hauch v. Connor* the Court of Appeals of Maryland faced the issue of whether Maryland residents may sue a co-employee, who is also a Maryland resident, for injuries that were incurred in a state that precludes such suits. Focusing on public-policy considerations of the kind central to interest analysis, the court reached a more equitable result than application of traditional choice-of-law rules would have permitted. Although the court asserted its continued adherence to lex loci delicti in tort cases generally, it used common escape devices to avoid applying that rule in *Hauch* and supported its decision largely by reference to cases decided on the basis of interest analysis. In future conflict of laws cases, the Maryland court should continue to look beyond mechanical application of rigid rules to consider the policies behind the laws that it is asked to apply. This approach would allow the court consistently to reach decisions that comport both with the genuine interests of the states concerned and with justice between the parties.